MONTANA LEGISLATIVE HISTORY

Chapter 444 ~~19~~ 2001

Bill H 381 S _____ Original bill & history ✓ C

H. Committee on Taxation			S. Committee on Taxation		
Hearing Date(s)	1-29	✓ C	Hearing Date(s)	3-2	✓ C
	2-2	✓ C		3-13	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 381

INTRODUCED BY M. NOENNIG

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING CERTAIN PROPERTY TAX LAWS AS THEY RELATE TO MULTIPLE, UNDIVIDED INTERESTS IN A PARCEL OF LAND; ALLOWING THE DEPARTMENT OF REVENUE TO SEND THE NOTICE OF CLASSIFICATION AND APPRAISAL TO A SINGLE OWNER OF A MULTIPLE, UNDIVIDED INTEREST IN A PARCEL OF LAND; ESTABLISHING A LIEN FOR AN OWNER WHO REDEEMS A PROPERTY TAX LIEN FOR OTHER OWNERS OF A MULTIPLE, UNDIVIDED INTEREST IN A PARCEL OF LAND; AMENDING SECTIONS 15-7-102 AND 15-18-112, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Notice of classification and appraisal to single address for owners of undivided interest.** (1) (a) Subject to subsection (2), in the case of multiple, undivided interests in a parcel of land, the department shall send the notice of classification and appraisal required by 15-7-102 to a single owner of the land, as provided in this section.

(b) Except as provided in subsection (1)(c), the owners of the land shall provide to the department the name and address of the owner to whom the notice is to be sent and shall notify the department of a change in name or address. If an address is not provided, then the department shall send the notice to the address to which previous notices were sent.

(c) In the case of multiple, undivided interests in a parcel of land created after [the effective date of this act], the department shall send the notice to the name and address shown on the recorded document creating the multiple, undivided interests in the land. If more than one name and address is shown on the document, the department shall send the notice to the first name and address shown on the document.

(2) A copy of the notice must be sent to other persons upon request of an owner of the land.

Section 2. Section 15-7-102, MCA, is amended to read:

"**15-7-102. Notice of classification and appraisal to owners -- appeals.** (1) (a) ~~The~~ Except as provided in [section 1], the department shall mail to each owner or purchaser under contract for deed a

notice of the classification of the land owned or being purchased and the appraisal of the improvements on the land only if one or more of the following changes pertaining to the land or improvements have been made since the last notice:

(i) change in ownership;

(ii) change in classification;

(iii) except as provided in subsection (1)(b), change in valuation; or

(iv) addition or subtraction of personal property affixed to the land.

(b) After the first year, the department is not required to mail the notice provided for in subsection (1)(a)(iii) if the change in valuation is the result of an annual incremental change in valuation caused by the phasing in of a reappraisal under 15-7-111 or the application of the exemption under 15-6-201 or caused by an incremental change in the tax rate.

(c) The notice must include the following for the taxpayer's informational purposes:

(i) the total amount of mills levied against the property in the prior year; and

(ii) a statement that the notice is not a tax bill.

(d) Any misinformation provided in the information required by subsection (1)(c) does not affect the validity of the notice and may not be used as a basis for a challenge of the legality of the notice.

(2) (a) Except as provided in subsection (2)(c), the department shall assign each assessment to the correct owner or purchaser under contract for deed and mail the notice of classification and appraisal on a standardized form, adopted by the department, containing sufficient information in a comprehensible manner designed to fully inform the taxpayer as to the classification and appraisal of the property and of changes over the prior tax year.

(b) The notice must advise the taxpayer that in order to be eligible for a refund of taxes from an appeal of the classification or appraisal, the taxpayer is required to pay the taxes under protest as provided in 15-1-402.

(c) The department is not required to mail the notice of classification and appraisal to a new owner or purchaser under contract for deed unless the department has received the transfer certificate from the clerk and recorder as provided in 15-7-304 and has processed the certificate before the notices required by subsection (2)(a) are mailed. The department shall notify the county tax appeal board of the date of the mailing.

(3) If the owner of any land and improvements is dissatisfied with the appraisal as it reflects the market value of the property as determined by the department or with the classification of the land or

improvements, the owner may request an assessment review by submitting an objection in writing to the department, on forms provided by the department for that purpose, within 30 days after receiving the notice of classification and appraisal from the department. The review must be conducted informally and is not subject to the contested case procedures of the Montana Administrative Procedure Act. As a part of the review, the department may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer in support of the taxpayer's opinion as to the market value of the property. The department shall give reasonable notice to the taxpayer of the time and place of the review. After the review, the department shall determine the correct appraisal and classification of the land or improvements and notify the taxpayer of its determination. In the notification, the department shall state its reasons for revising the classification or appraisal. When the proper appraisal and classification have been determined, the land must be classified and the improvements appraised in the manner ordered by the department.

(4) Whether a review as provided in subsection (3) is held or not, the department may not adjust an appraisal or classification upon the taxpayer's objection unless:

(a) the taxpayer has submitted an objection in writing; and

(b) the department has stated its reason in writing for making the adjustment.

(5) A taxpayer's written objection to a classification or appraisal and the department's notification to the taxpayer of its determination and the reason for that determination are public records. The department shall make the records available for inspection during regular office hours.

(6) If any property owner feels aggrieved by the classification or appraisal made by the department after the review provided for in subsection (3), the property owner has the right to first appeal to the county tax appeal board and then to the state tax appeal board, whose findings are final subject to the right of review in the courts. The appeal to the county tax appeal board must be filed within 30 days after notice of the department's determination is mailed to the taxpayer. A county tax appeal board or the state tax appeal board may consider the actual selling price of the property, independent appraisals of the property, and other relevant information presented by the taxpayer as evidence of the market value of the property. If the county tax appeal board or the state tax appeal board determines that an adjustment should be made, the department shall adjust the base value of the property in accordance with the board's order."

Section 3. Section 15-18-112, MCA, is amended to read:

"**15-18-112. Redemption from property tax lien** -- lien on interest in property for taxes paid. (1)

Except as provided in subsection ~~(3)~~ (4), in all cases ~~where~~ in which a property tax lien has been acquired, the purchaser may pay the subsequent taxes assessed against the property.

(2) Upon the redemption of the property from the property tax lien, the redemptioner shall, in addition to the amount for which the property tax lien was sold, including penalties, interest, and costs, pay the subsequent taxes assessed, with interest and penalty ~~thereon~~ at the rate established for delinquent taxes in 15-16-102.

(3) An owner of less than all of the interest in real property who redeems a property tax lien on the property has a lien for the taxes paid on the interests of the property that are not owned by the redemptioner.

~~(3)~~(4) The property tax lien may also be redeemed for a particular tax year by a partial payment of that tax year, as provided in 15-16-102(5), if:

(a) the property tax lien for the year in which the partial payment is made is owned by the county; and

(b) the tax deed has not been issued pursuant to 15-18-211."

NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 15, chapter 7, part 1, and the provisions of Title 15, chapter 7, part 1, apply to [section 1].

NEW SECTION. **Section 5. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 6. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to property tax years beginning after December 31, 2000.

- END -

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/30/2001			
(H) Signed by Governor	04/30/2001			
(H) Transmitted to Governor	04/20/2001			
(S) Signed by President	04/19/2001			
(H) Signed by Speaker	04/17/2001			
(H) Returned from Enrolling	04/13/2001			
(C) Sent to Printing	04/12/2001			
(H) Sent to Enrolling	04/12/2001			
(H) 3rd Reading Passed as Amended by Senate	04/12/2001	98	2	
(H) Scheduled for 3rd Reading	04/12/2001			
(H) 2nd Reading Senate Amendments Concurred	04/11/2001	93	5	
(H) Scheduled for 2nd Reading	04/11/2001			
(S) Returned to House with Amendments	03/17/2001			
(S) 3rd Reading Concurred	03/17/2001	42	1	
(S) Scheduled for 3rd Reading	03/17/2001			
(S) 2nd Reading Concurred on Voice Vote	03/16/2001	48	1	
(S) Scheduled for 2nd Reading	03/16/2001			
(S) Scheduled for 2nd Reading	03/15/2001			
(S) Committee Report--Bill Concurred as Amended	03/13/2001			(S) Taxation
(C) Sent to Printing	03/13/2001			
(S) Committee Executive Action--Bill Concurred as Amended	03/13/2001	9	0	(S) Taxation
(S) Hearing	03/02/2001			(S) Taxation
(S) Referred to Committee	02/07/2001			(S) Taxation
(S) First Reading	02/07/2001			
(H) Transmitted to Senate	02/06/2001			
(H) 3rd Reading Passed	02/06/2001	86	14	
(H) Scheduled for 3rd Reading	02/06/2001			
(H) 2nd Reading Passed	02/05/2001	84	15	
(H) Scheduled for 2nd Reading	02/05/2001			
(C) Sent to Printing	02/02/2001			
(H) Committee Report--Bill Passed as Amended	02/02/2001			(H) Taxation
(H) Committee Executive Action--Bill Passed as Amended	02/02/2001	19	1	(H) Taxation
(H) Hearing	01/29/2001			(H) Taxation

(C) Introduced Bill Text Available Electronically	01/24/2001			
(H) Referred to Committee	01/24/2001			(H) Taxation
(H) First Reading	01/24/2001			
(H) Introduced	01/24/2001			
(C) Draft Delivered to Requester	01/22/2001			
(C) Draft Ready for Delivery	01/19/2001			
(C) Draft in Assembly/Executive Director Review	01/18/2001			
(C) Draft in Final Drafter Review	01/17/2001			
(C) Bill Draft Text Available Electronically	01/17/2001			
(C) Draft in Input/Proofing	01/17/2001			
(C) Draft to Drafter - Edit Review [CAJ]	01/17/2001			
(C) Draft in Edit	01/17/2001			
(C) Draft in Legal Review	01/16/2001			
(C) Draft to Requester for Review	01/15/2001			
(C) Draft Request Received	01/06/2001			

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB STORY**, on January 29, 2001 at 9:00 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Rep. Bob Story, Chairman (R)
Rep. Ron Erickson, Vice Chairman (D)
Rep. Joan Andersen (R)
Rep. Keith Bales (R)
Rep. Joe Balyeat (R)
Rep. Gary Branae (D)
Rep. Eileen Carney (D)
Rep. Larry Cyr (D)
Rep. Rick Dale (R)
Rep. Ronald Devlin (R)
Rep. John Esp (R)
Rep. Gary Forrester (D)
Rep. Daniel Fuchs (R)
Rep. Verdell Jackson (R)
Rep. Jesse Laslovich (D)
Rep. Trudi Schmidt (D)
Rep. Butch Waddill (R)
Rep. Karl Waitschies (R)
Rep. David Wanzenried (D)

Members Excused: Rep. Roger Somerville, Vice Chairman (R)

Members Absent: None.

Staff Present: Jeff Martin, Legislative Branch
Rhonda Van Meter, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 381, 1/24/2001
Executive Action: HB 248; HB 274; HB 70

HEARING ON HB 381

Sponsor: **REPRESENTATIVE MARK NOENNIG, HD 9, Billings**

Proponents: **Dolores Cooney, Department of Revenue**
Stuart Doggett, Montana Land Title Association

Opponents: None.

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 1.6}

REP. NOENNIG said this bill was requested by the Department of Revenue to address a problem notifying owners of undivided interest of property. Undivided interests are those that have not been segregated by a boundary but each person owns an undivided share of the property. There is a notice of classification and assessment of the property that goes out to the owners. Should the property taxes become delinquent, any person can redeem property from a tax certificate. There has been difficulty mailing notices to all of the owners, because a lot of them have not been identified. When a deed is recorded, an address will be required to be given so it is known where the tax notices should be mailed to. This bill allows the Department to mail the notice to a single owner but still assesses the taxes against the whole property and all of the owners. It requires the owners to provide a name and address of where they want the notices sent. The statute allows the Department to send notice to anybody who requests a notice of classification. He gave an example of a property tax situation on a condominium. There needs to be a clear distinction between the procedure for notice and assessment versus application for a tax deed, and this is addressed in Section 2 of the bill.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 10.2}

Dolores Cooney, Department of Revenue, said the bill allows the Department in case of multiple undivided ownership of a single parcel to send a single notice of assessment to an address outlined by the group of owners. Undivided interest most often occurs in tribal lands and mining claims, and she gave an example. A Supreme Court case in 1998 out of Jefferson County was an example of undivided interest being separately assessed. Subsequently, one of the taxpayers did not pay the taxes and it went up for tax sale due to delinquent payment. The other owner did not receive notice of the tax sale, so this was the court

challenge. The ruling says undivided interests need to be assessed as a whole and the owners notified. This bill addresses sending a single notice of assessment, delineates that the owners of the undivided interest will provide an address of where they want the notice to be sent but allows other undivided interests holders of that property to request a copy of that assessment, and provides an owner who has paid all the taxes on an undivided interest property has a lien against the entire property. She handed out examples of undivided properties. **EXHIBIT(tah23a01), EXHIBIT(tah23a02), EXHIBIT(tah23a03)** Through an amendment, they would provide the additional owner names to the treasurer.

Stuart Doggett, Montana Land Title Association, said they like the process in this bill and believe it would be good for title insurers.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 14.7}

REP. FORRESTER asked if it was felt the Supreme Court decision was wrong. **Dolores Cooney** said the Supreme Court basically said the county was in error in assessing the two pieces of undivided interest separately, as it should have been assessed as a single parcel because there is no clear delineation between two pieces of undivided interest. **REP. FORRESTER** asked that if this bill would have been law at the time of the Supreme Court case if the outcome would have been different. **Dolores Cooney** said the case involved a tax sale. The issue of the notice of assessment was a side issue. If the second owner did not receive notification, then the case would still be the same.

REP. DEVLIN asked if the owners would designate who the single notice would get sent to. **Dolores Cooney** said this is correct. **REP. DEVLIN** asked if the Department would ever assign this designated address. **Dolores Cooney** said the bill provides that the taxpayers will need to choose the address where the notice needs to be sent. In the event there is no response from the taxpayer, the Department will send it to the first owner listed on the deed. **REP. DEVLIN** asked how the first person on a list of owners is determined. **Dolores Cooney** said the first name is generally the first owner filing.

REP. ERICKSON asked how a partial owner of a piece of property would know what they needed to pay in taxes if they do not receive a notice under this bill. **REP. NOENNIG** said when the notice of assessment is sent, it will be sent to one address.

The taxes are assessed against the entire property of undivided interest. Either the total amount of taxes are paid or not. If the taxes are not paid, the whole parcel is subject to going up for tax sale in June of the tax year in which the taxes are delinquent. If no one bids on this property, the parcel is turned over to the county. There is a 36-month period in which those taxes can be redeemed, and if they are not, a proceeding is instituted for a tax deed. Then there is a 60-day notice that has to be given to everybody who has an interest in the property.

REP. DEVLIN asked that if someone pays all of the taxes on a parcel they would have legal standings to collect from the other interest holders. **REP. NOENNIG** said this is correct. Presently someone has that right anyway, but in this bill, they would have a lien on the other property interests to secure the obligation.

CHAIRMAN STORY asked if the Department would now be required to put forth more effort to notify landowners. **REP. NOENNIG** said this could be an argument. **CHAIRMAN STORY** asked if the first notice received is what the assessed value of the property is. **Dolores Cooney** said yes. **CHAIRMAN STORY** asked if then eventually a tax bill is received. **Dolores Cooney** said yes. **CHAIRMAN STORY** asked if HB 381 would address the assessed value or the tax bill. **Dolores Cooney** said this bill is addressing who the assessment is to be addressed to. The assessment notice would go to this address, and subsequently the tax bill to the same address. **CHAIRMAN STORY** asked if this is proposing only one tax bill to be sent. **Dolores Cooney** said yes. **CHAIRMAN STORY** asked if the person receiving the bill was responsible for collecting the tax money from all of the other owners. **Dolores Cooney** said this is correct. **CHAIRMAN STORY** asked if one owner was to pay all of the taxes over many years then that owner could claim the other owners did not pay their taxes and ultimately get all of the land. **REP. NOENNIG** said yes. Currently you could let the taxes go delinquent and purchase the property at tax sale, and if none of the owners came forward to pay the taxes, you could start proceedings for the tax deed. Another option is to just try and pay your proportionate share of the taxes, but this will not be accepted because there is only one tax statement for the total amount of taxes owed. The third option is to pay the full amount of taxes, and then you will have a lien on the rest of the property; however, this lien has no priority date, so until you win a judgement that someone owes you the money, the situation will remain the same. **CHAIRMAN STORY** asked what the cost would be of a title search for notification of all parties in a tax deed proceeding and who would bear that cost. **Dolores Cooney** said the tax sale process is in the county treasurer's office, so they would probably bear the cost.

REP. WADDILL asked if this bill would save a significant amount of administration for the Department of Revenue. **Dolores Cooney** said current practice is a combination of undivided interest being assessed separately and as a group. The bill was brought forward because there was no provision to clearly assess the undivided interest as a single notice. Undivided interest property should not be separately assessed because it is a parcel as a whole, and the taxes should be paid as a whole. When there are separate assessments, this does present a problem similar to the court case mentioned.

REP. DEVLIN asked how another partial owner would know the taxes were being paid on the property. **REP. NOENNIG** said that owner would have to find out on their own. The benefit is that the Department does not have to go through the time and expense of going through all of the records to find all of the owners or hiring a title company to do this. **REP. DEVLIN** asked if all of the owners at some time would receive a notice that the property was being put up for tax deed. **REP. NOENNIG** said the 60-day notice mentioned before allows for the county treasurer to notify everybody with an interest.

REP. SCHMIDT asked if most people know they have an interest in property. **REP. NOENNIG** said ordinarily yes, but with mineral interests it can be so fractionated by inheritance that sometimes they might not. **REP. SCHMIDT** asked if there are enough cases to justify that this is needed. **REP. NOENNIG** said there are.

REP. FORRESTER asked what happens if attorneys dealing with an estate are late notifying the owners and the property goes up for tax deed. **REP. NOENNIG** said if the probate took that long, it is possible one of the heirs would not receive a notice, but the representative of the estate should have gotten a notice. Missing a deadline would be malpractice of an attorney and there could be recourse.

CHAIRMAN STORY asked what the recourse would be if there are partial owners paying their money to the responsible party and that person is not paying the taxes. **REP. NOENNIG** said if you own an undivided interest in property and have informally designated one of the owners of the group to pay the taxes, then that person has a fiduciary responsibility to take care of payment of those taxes. **CHAIRMAN STORY** asked how the Department will deal with condominiums where the land is still in common. **Dolores Cooney** said condominiums have specific statutes that apply to them that detail exactly how assessment will be made through a condominium declaration. Most often in this declaration there is a home divided interest and an undivided

interest of the common area. This bill would not affect this particular case.

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 11}

REP. NOENNIG said the bill is for efficiency and will preclude the Department of Revenue from having to do an exhaustive title search every time they send out a notice of assessment. It has the additional benefit that is someone does pay someone else's share, they have a lien against that share.

EXECUTIVE ACTION ON HB 248

{Tape : 1; Side : B; Approx. Time Counter : 15.6}

Motion: **REP. JACKSON** moved that **HB 248 DO PASS.**

Discussion:

REP. DEVLIN said there was possibly an amendment regarding the fee structure. **CHAIRMAN STORY** said there are no amendments. **REP. WAITSCHIES** asked if the "big bill" passes this would be a waste. **CHAIRMAN STORY** said the intent was to look more at the funding of state government, whereas the "big bill" does not do much with funding. **REP. DEVLIN** asked if this was done 2-3 years ago. **CHAIRMAN STORY** said between the 1997 and 1999 session there was a property tax study committee made up of legislators that traveled throughout the state and talked about sales tax replacing property tax. There was no discussion about income tax. **REP. BALES** said the tax system has been studied, but there is a difference with this bill in that it tries to get groups together other than just the legislators to address all of the ramifications of tax structure on businesses. He wondered if fees should also be included in this, because in ways they have a similar affect as taxes and should be studied at the same time. **CHAIRMAN STORY** asked if the title of the bill is broad enough to include fees. **Jeff Martin** said he did not think so.

Motion: **REP. ESP** moved that **HB 381 BE AMENDED.**

Discussion:

CHAIRMAN STORY asked if amending the bill to include fees would be difficult. **Jeff Martin** said no. **REP. FUCHS** said the bill seems to already include fees in it. **REP. ESP** said that it might

Discussion: **Jeff Martin** explained the amendment would limit this to a publicly funded educational institution within Montana which falls under definitions under Federal law. **REP. BALYEAT** said he is going to oppose this amendment because it is bad policy and complicates things unnecessarily. The Federal credit does not limit to only the students at public universities. Legal council has said they do not believe it is unconstitutional to grant a credit, as long as it is nonrefundable. **REP. DALE** said it is his understanding that the reason for this amendment is to reduce the fiscal note. The long-term goal is to education our young people, and from a policy standpoint, we cannot divide the opportunity between public and private institutions. **REP. DEVLIN** said he is against this amendment because it gives the publicly funded education a distinct advantage for recruiting. **REP. CARNEY** said she is opposed to the amendment. Educating people makes them more productive so they will pay more taxes, so in the interim we will get back more than we spend according to the fiscal note. **REP. ERICKSON** said this issue has not been tested constitutionally, and this amendment is to make sure this bill cannot be challenged.

Motion/Vote: **REP. LASLOVICH** moved that **AMENDMENT DO PASS. Motion failed 6-14 with Branae, Cyr, Erickson, Laslovich, Schmidt, and Wanzenried voting aye.**

Motion/Vote: **REP. ESP** moved that **HB 330 BE TABLED. Motion failed 9-11 with Andersen, Bales, Balyeat, Dale, Esp, Fuchs, Jackson, Waddill, and Waitschies voting aye.**

Discussion: **REP. BALYEAT** said the major flaw in this bill is that is gives a percentage of the Federal scholarship credit as a credit on the Montana return. The Federal credit already gives a 100% credit of the first $1000 that is spent on college tuition. If this bill passes, someone could spend $1000 in tuition and actually get back $1100 in credits. **REP. ERICKSON** said the problem is the tuition in Montana is much higher than $1000.

Action was then postponed.

EXECUTIVE ACTION ON HB 381

{Tape : 1; Side : B; Approx. Time Counter : 7.3}

Motion: **REP. SOMERVILLE** moved that **HB 381 DO PASS.**

Motion: **REP. BALYEAT** moved that **AMENDMENT DO PASS.**

Discussion: **EXHIBIT(tah27a04)** **Jeff Martin** said this amendment would require the Department of Revenue to furnish the names available for each undivided interest located within a county. An important reason for this is for the tax sale/tax deed process so the county treasurer will have as much information as possible regarding owners. **REP. BALYEAT** asked if the Department of Revenue concurs with the amendment. **Dolores Cooney** said they concur.

Motion/Vote: **REP. BALYEAT** moved that **AMENDMENT DO PASS. Motion carried 20-0.**

Motion: **REP. LASLOVICH** moved that **HB 381 DO PASS AS AMENDED.**

Discussion: **REP. ESP** asked if an owner requests a copy of the notice to be sent to another person it will only be sent once. **Jeff Martin** said it would have to be requested each year or time. **Dolores Cooney** said this is an administrative rule issue that could be dealt with. If a subsequent owner needed a copy on a yearly basis, the Department could establish something to accommodate those taxpayers. **REP. ESP** asked if a subsequent owner could request a notice be sent every year so they would know if things were up to date. **Dolores Cooney** said yes. **CHAIRMAN STORY** said he had a concern about the broadness of the language in Section 2 and wondered if the Department would have to send a notice to everyone in the state if someone requested this. **Dolores Cooney** said the statute permits this request, but they wish this would not happen. **REP. DEVLIN** asked if he was interested in a piece of property if his name could be put on the list to receive a copy of the notice. **Dolores Cooney** said she would hope not. As a taxpayer, you have a right to have a copy of anybody's tax bill because it is public record, but there is not a current system in place where this could be automatically received.

Motion/Vote: **REP. LASLOVICH** moved that **HB 381 DO PASS AS AMENDED. Motion carried 19-1 with Fuchs voting no.**

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON TAXATION

Call to Order: By **CHAIRMAN BOB DEPRATU**, on March 2, 2001 at 8:00 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:
Sen. Bob DePratu, Chairman (R)
Sen. Alvin Ellis Jr., Vice Chairman (R)
Sen. John C. Bohlinger (R)
Sen. Mack Cole (R)
Sen. Jon Ellingson (D)
Sen. Bill Glaser (R)
Sen. Dan Harrington (D)
Sen. Emily Stonington (D)

Members Excused: Sen. Pete Ekegren (R)

Members Absent: None.

Staff Present: Lee Heiman, Legislative Branch
Deb Thompson, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: House Bill 381, 2/20/2001
Executive Action: None

HEARING ON HOUSE BILL 381

Sponsor: REPRESENTATIVE MARK NOENNIG, HD 9, Billings

Proponents: Dolores Cooney, Department of Revenue

Opponents: REPRESENTATIVE CAROL JUNEAU, HD 85, Browning

Opening Statement by Sponsor: REPRESENTATIVE NOENNIG presented the bill. He said this was at the request of the Department of

Revenue to address a problem regarding notice of assessments and subsequent tax deed procedures necessary for undivided interests of land. He described the process when taxes are delinquent and there is a notice of assessment, tax sale and tax sale certificate issued. The tax deed is certified by the county and the property owner has 36 months for redemption after the sale. Notice is given to every interested party sixty days prior to the tax deed sale and then title is transferred to the person who has paid the taxes, either the county or some third party. The problem arose when the Department of Revenue's concern about multiple owners of one parcel. Mailing notices to multiple owners can be difficult as they really don't have the resources to find out how many undivided interests there are and their names, then mail each one an assessment notice for the undivided interest or for the entire parcel. It is being done inconsistently with some people getting notices separately and some not. The purpose of the bill would establish a procedure for identifying someone for whom the notice of assessment must be mailed. The Department will send a notice to a single owner of the land and the owners are to provide the Department with the name and addresses of the owners for whom the notices shall be sent. If one isn't provided, they will send one where it was previously sent. New deeds that list owners would have the first one on the deed sent the notice. It was amended in the House because there was concern about the procedure during the redemption period, as far as acquisition of the deed - every owner has to be notified. It is at that time a title search needs to be done to identify every owner and their address. This must be done in order to satisfy the due process requirements. They must all be mailed notices before the tax sale procedure takes place. There is a provision on page 2, lines 1-5, which requires the county treasurers be advised that there are multiple owners. The second part of the bill is found on page 4, lines 9-21. The example of divided ownership of a condominium, is there is one tax ID number for one parcel. In the middle of the year there is an actual recording of the condominium document so each subsequent owner will have an undivided interest in each of the parcels. What often happens is some of these units are sold where there is a new tax ID number. The problem arises when one unit becomes delinquent and a foreclosure is occurring. The only way the treasurer will accept the taxes are with the taxes for the whole parcel. The county can't accept undivided interest. After paying the whole parcel's taxes, there is no way to collect from the one delinquent taxpayer. The only way to collect would be to claim some kind of lien to proceed against all the other owners. He asked this be put in statute, that under those circumstances somebody who owns a portion and pays the taxes for all the property, has a lien against the rest of the owners for repayment of the amount of the taxes that were paid.

Proponents' Testimony: Dolores Cooney, representing the Department of Revenue, spoke in favor of the bill. She said the bill was requested as a result of a Supreme Court decision. The bill would provide for a single assessment notification when there are multiple undivided interests. She referenced mining claims where one owner could have 50% and another person had 50% interest - their interests were in the property as a whole. There is no 50% on the ground. The bill allows assessment by the Department of Revenue of a single owner with the other owners listed in an "and others" or "et al" category. It allows the Department to appraise the property as a whole and then it is dispersed among the owners. The treasurer cannot bill the individual parcels, as it is a single parcel. The joint tenants of the property have rights over the whole property. She explained this is what happened in the Needler Case in 1998. This involved a tax sale on 50% interest in a mining claim and had issues involving notification. A part of the Supreme Court decision addressed the assessment of the property. In the discussion of the assessment of the property, the Supreme Court said that the District Court had failed to address whether or not the county, meaning the Department of Revenue, separate assessment of each undivided interest in this parcel was proper in the first instance. They don't believe it was proper. Not only is there no expressed statutory authorization for the manner in which the Department had appraised and assessed the property, but that form of assessment infringes on the rights normally afforded to tenants, such as tenants in common. Once the decision came out, in order to abide by it, would have to change appraisal practices in Jefferson County. Jefferson County was erroneously assessing two different interests in this single property as two different assessments. This bill was brought forward to rectify that problem. She distributed examples of undivided interests that demonstrates how extensive the problem can get if they cannot assess the parcel as a whole. **EXHIBIT(tas48a01)** She explained the records were from the archive in the Anaconda Company and it shows over a period of time how the undivided interests can be more and more complex. The second page is another example of a mining claim. The third page is a file from Glacier County. There are two different types of property in Glacier County. They have patented property going to specific owners. That interest in that patent is not the type of property that this bill addresses. The patent number is expressly tied to that particular owner and to a piece on the ground. There is property under a single patent, that has multiple undivided interests. She explained that with the example, Frank Prairie Chicken, et al, had the et al owners listed in the middle of the page. There has been a concern expressed about the tribal property, but this is a different type which is an undivided interest under a single patent. She explained an undivided interest is a partial interest in those

rights. However, it involves the total rights. In order to take undivided interests and attempt to assess them separately, you need to think about appraising them separately, which begins to go against the rules of appraisal and fee simple title. House bill 381 has three basic parts: 1. The ability to assess a single parcel with multiple interests; 2. If there are owners who want part of that interest and they wish to receive a copy of that assessment, the Department will provide a copy of the whole assessment to them; 3. will provide for a lien in the event of a tax assignment. ***{Tape : 1; Side : A; Approx. Time Counter : 7.7 - 16.3}***

Opponents' Testimony: **REPRESENTATIVE CAROL JUNEAU**, HD 85, Browning, representing the Blackfeet Tribe and Glacier County, spoke against the bill. She distributed a letter in opposition from **Mark Magee**, Director of the Land Department of the Blackfeet Nation. **EXHIBIT(tas48a02)** **Mr. Magee** pointed out the assumption that there are owners that are related. He said that one cannot appeal the classification and appraisal notice if it is not received. It should not be the burden of notification on the single landowner. Since the undivided interests vary in size, how would a single landowner establish an appraised value for each interest? **REP. JUNEAU** requested further review and clarification before proceeding with the bill. ***{Tape : 1; Side : A; Approx. Time Counter : 15.9 - 23}***

Questions from Committee Members and Responses: **SENATOR ELLIS** asked about the BIA owning partial trust lands. **REP. JUNEAU** said yes, if you had a piece of property through the inheritance process, some may be in trust status where an individual is on the deed along with the government. Some could be in a persons name through fee status, through the process of inheritance and probate and other ways. She noted there were a lot of complexities of ownership, especially on Reservations. One of the many concerns was the need to communicate with the Department of Revenue so that the enormous loss of lands, because of tax deeds and other issues, would not continue to occur. ***{Tape : 1; Side : A; Approx. Time Counter : 23 - 25.9}***

SENATOR ELLIS asked how these parcels were handled now. **Ms. Cooney** replied that Trust Lands were not taxed in Montana. Fee land is clearly taxed. She said she would clarify whether lands could be mixed Trust and fee. The need for consistency in dealing with multiple land owners is important. **REP. MCKENNEY** said he was troubled thinking there could be an undivided ownership between the Trust lands and the fee lands. If this is true, the problems go beyond the notices in this bill. When you get to the tax deed, that is where there will be a problem. You would have to figure out a way to have a deed action on the part

that is delinquent in taxes. If you have the delinquency - first of all the Supreme Court has said there was no legal authority for separately assessing property that is undivided. How would the Department of Revenue determine the value of an undivided interest? It is the ownership of the parcel that has the value. There is no mechanism for determining what an undivided interest share of the value is. ***{Tape : 1; Side : A; Approx. Time Counter : 25.9 - 30}***

SENATOR ELLINGSON asked how land would be held by unrelated parties. **REP. JUNEAU** replied in terms of the undivided interests of land on the Reservations, when lands were allotted through the allotment act, people were given 160 acres. Over the years, when they passed away, it was divided out among their children through probate, marriage to a non-Indian or someone from another state. The land has subdivided over and over and now there is more fractional ownership. There are lots of issues and complications in title land. ***{Tape : 1; Side : B; Approx. Time Counter : 0 - 7.1}***

SENATOR COLE clarified there were two types of Trust lands, some Tribal land and some owned by individuals. The problem is with the individuals. The Blackfeet had thirty thousand acres of fee land within the Reservation. He noted problems with the bill when it deals with allotments that are split up as far as 1/3600ths and some of the allotments were ten acres, some 160 acres. Some of the assessments were one and two cents a year and could not even be mailed until they reached a dollar. There may be 500 owners on forty acres. He suggested looking at the individual fee patent lands. Also, they are not taxed when they are on the Reservation as there has been some agreements made between some of the Tribes and the state of Montana. There may be a way of exempting some of these out. **REP. NOENNIG** said that trust lands were not involved but fee lands that had so many owners would be difficult to assess. Those already receiving notices that have fractional interests, can request to continue receiving notification. The question of who pays what if they don't know each other is difficult to determine. It is not be complied with now and the Department needs a solution. ***{Tape : 1; Side : B; Approx. Time Counter : 7.1 - 11}***

SENATOR STONINGTON asked about the variations of how the Department deals with the problem. **Ms. Cooney** replied the correct way to do it is to assess the parcel, mail to a single owner and carry the other owners as an et al file. This is what happened when the Supreme Court dealt with the issue. However, the Department felt in order to reinforce the correct way to do it, clear statutory language was necessary. ***{Tape : 1; Side : B; Approx. Time Counter : 9.5 - 12.5}***

Closing by Sponsor: **REP. NOENNIG** closed. He pointed out the problem of an undivided 1/500th interest goes delinquent in taxes and there is a foreclosure and tax deed. What does the new owner do with that? **CHAIRMAN DEPRATU** asked **SENATOR COLE** to work with the sponsor, the Department of Revenue and all the Tribes on ideas and to address concerns they may have. ***{Tape : 1; Side : B; Approx. Time Counter : 24 - 27.5}***

Motion/Vote: **SENATOR STONINGTON** moved that **HB 412 BE CONCURRED IN. Motion carried 8-1 with SENATOR ELLIS voting no.**

EXECUTIVE ACTION ON HB 381

Motion/Vote: **SENATOR COLE** moved that **AMENDMENTS TO HB 381 BE ADOPTED. EXHIBIT(tas57a01) Motion carried unanimously.**

Motion/Vote: **SENATOR COLE** moved that **HB 381 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

ADJOURNMENT